the question by this ruling the court adds: "A declaration that is prepared when the declarant is in the full possession of his mental faculties and in confident hope of recovery, to be signed in the possible event of a subsequent conviction of a fatal termination" is not admissible as a dying declaration, though when signed the declarant had no hope of recovery. "Such an instrument cannot be said to be the free and voluntary act of the person, originated and executed under a solemn sense of impending death." It is this last statement of the court which gives this case its legal interest. Is it true that the declaration must have "originated" at a time when the declarant was under the conviction that death was imminent? May it not be true that a dying declaration need not have "originated" with the declarant at all, in the sense in which the court uses that term, and still it be admissible? If one when he does believe his death to be imminent as the result of the violence being investigated indorses in any clear way the declaration of any person as to the circumstances of the offense, is it not an admissible declaration? Is it not competent to show the declaration of that other person and its affirmance by the person since deceased? Upon principle it should be so though direct authority for just this proposition is not at hand. True, there may be circumstances in particular cases, and they may have existed in this case, stamping the offered declaration as unreliable so as to require its rejection as evidence. It is not the rejection of the evidence in this case we are disposed to criticise but rather the proposition of the court that the mental attitude of the declarant toward approaching death essential to a competent dying declaration must have existed at the time the declaration was conceived as well as when it is finally affirmed. In this we think the court fails to state correctly the rule upon authority. 1 GREENLEAF'S EVIDENCE, ed. 16, p. 249. In *Reg.* v *Steele*, 12 Cox Cr. Cas. 168, declarant made a statement to a witness orally. Subsequently when in a condition to make a competent dying declaration he affirmed the truth of the prior statement and the prior statement was admitted on the strength of the subsequent affirmation.

In *Johnson* v. *State*, 102 Ala. 1; *Mockabee* v. *Com.* 78 Ky. 380, and in *Snell* v. *State*, 29 Tex. App. 236, written statements were made when hope of recovery was present to defeat their competency as dying declarations. An affirmation of the truth of the written statement made subsequently and at a time when conditions were present which would make a declaration competent was held in each of the cases to render the previous written statement competent though not read by or to the declarant at the time of the affirmation. The supreme court of the United States in *Carver* v. *United States*, 160 U. S. 553 seems to approve this view. The principal case is *Harper* v. *State*, 79 Miss. 575.

PARTNERSHIP BY ESTOPPEL IN TORT CASES.—In *Stables* v. *Eley* (1824) 1 Car. & P. 614, 12 Eng. Com. L. 348, there was an action to recover damages for an injury caused through negligent driving by a person alleged to be defendant's servant. It appeared that defendant and one King had been in partnership, but that the partnership had been dissolved twenty days before the injury, and that the vehicle driven was the property of King and that the driver was his servant. It appeared, however, also, that defendant's name was still on the cart and over the door of the former place of business,

and Abbott, C. J., ruled that the defendant by permitting his name to remain in this way had held himself out to the world as the owner of the cart and the master of the driver of it, and was therefore responsible for the negligence of the driver. The learned judge, however, failed to point out how either of the facts mentioned could have misled the plaintiff into being injured. This case has often been criticised (See POLLOCK'S DIG. OF PARTN. 6th ed. 54; LINDLEY ON PARTNERSHIP, 214) as it is obvious that such facts afford no foundation for the application of the principle of estoppel, and in *Smith* v. *Bailey*, [1891] 2 Q. B. 403, where the same principle was sought to be applied, it was disapproved. BOWEN L. J. concurred in a suggestion that the case might be misreported but said also that "the sooner the case disappears from the text-books the better."

In *Sherrod* v. *Langdon* (1866), 21 Iowa 518, which was an action to recover damages for false representation on the sale of sheep, it was held that a defendant who had held himself out as a partner in the transaction was estopped to deny it as against the plaintiffs who had bought in reliance upon his being a partner. In *Maxwell* v. *Gibbs* (1871), 32 Iowa 32, which was an action against defendants as partners to recover damages for negligent and unreasonable driving of a team of horses hired, it was held "that if they held themselves out to the world as partners, and the team was hired under such circumstances as to lead plaintiffs to believe them such, they would be estopped from denying the partnership." In both of these cases, however, the cause of action arose out of contractual relations.

In *Shepard* v. *Hynes* (1900), 104 Fed. Rep. 449, 45 C. C. A. 271, 52 L.R.A. 675, where it was sought to hold one person liable as partner for the wilful tort of another, it was held that such a liability could only be based upon an actual partnership. The fact that there had once been a partnership, which was secretly dissolved, and that the business was still conducted in the old firm name, was immaterial. There was no attempt to establish a contractual liability to someone with whom the firm had formerly dealt, but to make the defendant responsible for the wilful tort of another. The doctrine of estoppel has no application to such a case. See EWART ON ESTOPPEL, 529.

COLOR DISTINCTIONS—SEPARATION OF PASSENGERS UPON STREET CARS.—A regulation of a street railway company that colored passengers should occupy the front seats of the car, and white passengers the rear seats,—the seats being in all other respects alike,—and leaving to the conductor of the car the power and duty of determining how many seats should be set apart for each race, in view of the number of passengers of each race applying for seats upon each trip, was held to be reasonable and valid in *Bowie* v. *Birmingham Railway Co.* 125 Ala. 397, 27 So. Rep. 1016, 82 Am. St. Rep. 246. The cases of *West Chester, etc., R. Co.* v. *Miles*, 55 Pa. 209, 93 Am. Dec. 744, and *Hall* v. *McCuir*, 95 U. S. 435, were cited and relied upon.

MORTGAGE OF FUTURE OFFSPRING OF ANIMALS OWNED BY MORTGAGOR.—The supreme court of Nebraska has recently decided against the efficacy of a mortgage upon the future offspring of animals owned by the mortgagor. *Battle Creek Valley Bank* v. *First National Bank of Madison*, (1901), — Neb. — , 88 N. W. Rep. 145, 56 L. R. A. 124. "The offspring of